

## APPENDIX E

### GUIDELINES AND OPERATING POLICIES FOR COMMISSION MEMBERS, ALTERNATES, COMMISSION COUNSEL AND STAFF

#### A. Recusal

1. A Commission member, alternate member, Commission Counsel, or staff member, shall recuse if:
  - (a) he or she does not think he or she is able to act fairly or impartially in a matter, or that there may be a substantial appearance of bias ;
  - (b) a judge would be disqualified in a court pursuant to ~~Canon 3C~~ Canon 2, Rule 2.11 of the Arkansas Code of Judicial Conduct; or
  - (c) a matter involves a judge whom the member has publicly supported or opposed in a judicial campaign within five years of the date of the proceedings before the Judicial Discipline and Disability Commission (public support includes campaign contributions which must be disclosed under state law).
2. An objection to participation in a discussion of the Commission by a Commission member or alternate on the grounds of lack of impartiality or disability shall be brought to the attention of the Commission unless the member or alternate member voluntarily recuses. [T]he matter shall be decided by a majority of the remaining members or alternates. Members of an Investigation Panel shall recuse if the other two members decide they must recuse, based on the same criteria for regular members.
3. In other circumstances, the member is expected to participate.
4. The minutes of Commission meetings shall record the names of any Commission member or alternate not voting due to recusal. Investigation Panel vote sheets shall also indicate if any of the Panel members did not vote due to recusal.
5. Commission members shall recuse from resolving complaints before the Commission when they are associated with that complaint. The Commission members decided that as a matter of policy, anytime a voting member of the Commission is involved in a complaint, that individual will be considered as having automatically announced their recusal from consideration of that complaint. Being “associated with a complaint”

means to be the complainant, a witness or involved in the same or a parallel issue, case in controversy or other alleged facts that are the basis of the complaint.

## **B. Public and Media Contacts**

For purposes of these guidelines, “contacts” include correspondence, telephone calls, video or audio recordings and face-to-face meetings or encounters.

1. ~~The Chair or an acting Chair are the individuals authorized to speak for the Commission. Other Commission members, alternates, staff and attorneys for the Commission may be authorized by the Commission to speak for the Commission on particular issues or occasions. Those speaking for the Commission are subject to the confidentiality provisions of Section 2(g) of Act 637 of 1989, and rules promulgated by the Supreme Court.~~

The Executive Director is authorized to speak for the Commission. If the Communications are pursuant to Rule 7 (C)(3) then the Executive Director shall contact Commission Counsel to obtain permission from the Chair, Vice Chair or Acting Chair (if neither the Chair or Vice Chair are available) before making the type of disclosure authorized by that Rule. The Executive Director may designate the Deputy Executive Director to handle certain media and public contacts as the Director deems necessary. While speaking on behalf of the Commission any person authorized shall comply with the provisions of Rule 7 of the Rules of the Judicial Discipline & Disability Commission.

[This rule was changed by vote several years ago. The previous format existed before the Supreme Court changed the JDDC to a two tier Commission. Under current Rules it would appear improper for the potential factfinder to speak during cases or investigations. Additionally, as the Chair and Vice Chair are not full time employees it would be difficult and cumbersome for them to handle public inquiries, etc.]

2. If a Commission member, alternate, Commission Counsel, or staff member is contacted by the media or the public, about a new, pending or closed matter that has not been the subject of a Commission press release, such individuals shall not discuss the matter (except to inform the media or public that matters are confidential pursuant to statute and Commission rules). The Commission member or alternate should inform the Commission Counsel who will inform the Executive Director of such contact or the individual may refer the media representative or public contact to the Executive Director. Subject to the confidentiality requirements of ~~Section 2(g), Act 637 of 1989 and rules promulgated by the Supreme Court,~~ Rule 7 of the Arkansas Judicial Discipline and

Disability Commission, the Executive Director or other authorized person may discuss the matter considered by the Commission.

3. If a Commission member, alternate, Commission Counsel, or staff member is contacted by the media representative or member of the public about a matter that has been the subject of a Commission press release, such individual may read the content of the press release to the media representative or member of the public or refer the representative to the ~~Chair, acting Chair or~~ Executive Director.
4. If a Commission member, alternate, Commission Counsel, or staff member is contacted about general, non confidential matters, (e.g., its purpose, history, procedure, or composition), such individual may respond to the extent of the individual's knowledge or refer the inquirer to the Executive Director.
5. The Executive Director shall make available to all members, alternate members, and Commission Counsel copies of all Commission press releases.

### **C. Complainant and Judicial Officer Contacts**

1. A Commission member or alternate who becomes aware, either from information disclosed to such individual in person or by reason of having learned from news media or otherwise of information that causes such individual to believe a judicial officer may be guilty of conduct which, if found to be true, would require action by the Commission, he or she shall communicate that information to Commission Counsel who will then inform the Executive Director for handling as provided by the ~~Per Curiam Order~~ Rules of the Judicial Discipline & Disability Commission.
2. If a Commission member, alternate, Commission Counsel, or staff member is contacted about a new or pending matter by a judicial officer, a judicial officer's attorney, another agent, or a judicial officer's family or friends, the Commission member, alternate, Commission Counsel, or staff member shall not discuss the matter unless the Commission has given appropriate authorization.
3. If a Commission member, alternate, Commission Counsel, or a staff member is contacted by a complainant about a new, pending, or closed matter, such individual shall refer the complainant to the Executive Director. Correspondence from complainants about Commission business shall be referred to the Executive Director for acknowledgment and disposition.

4. If a Commission member or alternate receives a complaint (written or oral) about a Commission staff member other than the Executive Director, the member or alternate shall refer such complaint to Commission Counsel, who will send it to the Executive Director and to the Commission Chair or acting Chair. If a Commission member or alternate receives a complaint about the Executive Director the member or alternate shall refer it to the Chair or acting Chair, copying the Commission Counsel.
5. A complaint against a Commission member or alternate shall be brought to the attention of the regular members of the Commission through Commission Counsel. The matter may be placed on the agenda for the next regular meeting of the Commission.

#### **D. Confidentiality**

1. Confidentiality shall be maintained with regard to all new, pending, and closed matters in accordance with applicable legal requirements.
2. Commission members, alternates, and Commission Counsel shall ensure that all confidential documents in their possession are secured. When the members or alternates are notified in writing that documents in selected matters may be discarded, those who choose to discard such documents shall ensure that they are destroyed, those who choose to retain such documents shall continue to ensure that they are secured.
3. Confidential documents in possession of members, alternates, and Commission Counsel are the property of the Commission. Confidential documents in possession of members or alternates whose term has expired or who has become disabled or died, shall be returned to the Commission. Upon resignation, or termination of contract, Commission Counsel shall return any confidential documents in her or his possession to the Commission.

#### **E. Campaigns for Judicial Office and Other Standards**

1. Commission members, alternates, Commission Counsel and staff members should refrain from:
  - (a) active participation in all campaigns for judicial office; Active participation includes but is not limited to; participating as a campaign committee member, hosting fundraisers for a particular candidate, or otherwise volunteering his or her time or services to promote a particular judicial candidate.
  - (b) contribution in money or property to a campaign for judicial office; and

- (c) public endorsement of any candidate for judicial office; including but not limited to, a) permitting his or her name to be used by another in support of the candidate. b) permitting a campaign committee to use his or her name in support of a candidate, c) commenting about a candidate on any social media sites or electronically post in a manner that a reasonable person could interpret as an endorsement of a particular candidate or d) posting a campaign sign or other communication in support of a candidate in his or her yard, structure or on his or her vehicle.
2. Commission members, alternates, Commission Counsel and staff members should adhere to the Code of Judicial Conduct.
  3. The restrictions of this Section E do not apply to a Commission member who is seeking judicial office.

## **F. Operating Policies**

1. Issuance of Subpoenas by an Investigation Panel:

Pursuant to Rule 8 (C) an Investigation Panel may authorize subpoenas to be used by the JDDC staff to obtain documents, procure witness statements, and collect other evidence requested by the Panel. Upon completion, the Panel shall review the findings from the investigation. Until, and only if, an investigation proceeds to the stage described in Rule 8 (D) the subpoenas are confidential, shall not appear as a public record and are not subject to mandatory disclosure to the target of the investigation. The JDDC staff shall provide for the costs and efforts associated with procuring and serving subpoenas as authorized by the JDDC Investigation Panel handling the case.

2. Issuance of Subpoenas after Formal Statement of Allegations are Filed:

The following procedural rule is promulgated pursuant to Rule 2A of the Procedural Rules of the Arkansas Judicial Discipline & Disability Commission. The Commission staff will develop appropriate subpoena forms. Blank copies of these forms will be available to a judge or a judge's attorney.

A judge or the judge's attorney seeking a subpoena pursuant to Rule 9 (C) of the Procedural Rules of the Arkansas Judicial Discipline and Disability Commission shall submit a written request to the Commission, for a draft copy of the Commission subpoena. Pursuant to Rule 45 of the Arkansas Rules of Civil Procedure, the judge or the judge's attorney may issue and sign a subpoena for the judge and return the subpoena to the Commission for staff to affix the Commission seal to the subpoena.

The subpoena will then be returned to the requesting party. A copy of the subpoena forms and the subpoena request form are available upon request.

(Adopted April 17, 1992)

3. Violations of the Rule of Confidentiality:

Commission staff shall inform the Commission Counsel if it believes that any person has violated the confidentiality provisions of Rule 7. If the Commission believes that any person has violated the confidentiality provisions of Rule 7, after being informed of the confidentiality requirements by the Commission or its staff, Commission Counsel shall give such person written notification of the Commission's belief that they may have violated the Supreme Court's rules of confidentiality. Such notification shall include:

- (a) what notice the individual was given of the rules,
- (b) a summary of the facts surrounding the alleged breach, and
- (c) a request for a written response within thirty days from the individual.

The Commission will then consider the available evidence including the written response, if any, and make findings:

- (a) if the individual was given notice of the rules of confidentiality and
- (b) if there was a disclosure in violation of the confidentiality provisions.

After making such findings the Commission will then determine whether the violation is of such a magnitude to require forwarding of the matter to the Supreme Court for their consideration, or if the violation is of such a minor matter that no further action is necessary or appropriate.

If the Commission has reason to believe a violation of the rules of confidentiality has occurred and that further action is appropriate, Commission Counsel will file a petition with the Supreme Court asking for the appointment of a fact finding Special Master. Such Special Master will be asked to look into the matter and make appropriate findings and recommendations to the Supreme Court. (Adopted July 1994)

4. ~~Obtaining a Sworn Complaint or Preparing a Statement of Allegations~~

~~The Commission, pursuant to paragraph 8B of the Commission Procedural Rules, developed guidelines for the Executive Director to~~

~~obtain a sworn complaint or prepare a statement of allegations during an investigation. If during the initial investigation and evaluation, the Executive Director believes there exists sufficient cause to proceed to a probable cause determination, the Executive Director may ask the complainant, if any, to file a detailed signed sworn complaint against the judge. If a sworn complaint is not obtained, a clear statement of allegations against the judge and the alleged facts forming their basis may be prepared by the Executive Director. The sworn complaint or the statement of allegations will then be served on the judge. After the service upon the judge of the sworn complaint or statement of allegations the judge will then have twenty days to file a written answer with the Executive Director pursuant to paragraph 8H of the Commission's Procedural Rules. The matter will then be brought before the Commission to determine if the complaint should be dismissed or if the Commission should proceed to a probable cause hearing. The prior procedure in processing complaints had the Commission members consider if a sworn complaint should be requested or a statement of allegations prepared and then one of those served on the respondent judge. Rather than a complaint going before the Commission members to determine if a sworn complaint should be requested or a statement of allegations prepared, the Executive Director now makes that determination. The complaint filed would still go before the Commission members later for a determination to proceed to a probable cause hearing or to dismiss the complaint. (Adopted May 1995)~~

[This section was superseded and changed by the updated Rules of the Judicial Discipline & Disability Commission. March 13, 2008].

#### 4. ~~Timely Submission of Documents for a Probable Cause Hearing~~

~~For inclusion in letters notifying a judge of a probable cause hearing before the Judicial Discipline & Disability Commission. Any submission of material for consideration by the Commission members prior to the hearing or any application to the Commission affecting the conduct of the scheduling hearing (including requests for a continuance) requiring a ruling by the Commission or its Chair shall be served on the Commission's Executive Director at least ten (10) days prior to the date of the hearing. Additionally, please note that legible copies of documents, writings or exhibits which you intend to offer at the hearing, and are not included within the complaint, statement of allegations or your response thereto, must be provided to the Commission's Executive Director not later than four (4) days prior to the scheduled hearing date. Submissions, applications or other documents filed later will be considered out of time and may not be accepted. The same policy is applicable to and will be included in letters notifying a judge of a formal disciplinary hearing before the Commission.~~

~~(Adopted July 1999)~~

[This section was superseded and changed by the updated Rules of the Judicial Discipline & Disability Commission. March 13, 2008].

5. ~~Procedural Rules and Burden of Proof for Preliminary and Probable Cause Hearings~~

~~The Arkansas Rules of Civil Procedure shall not apply to any Commission hearing held prior to the Commission deciding to proceed to a Formal Disciplinary Hearing. A preponderance of the evidence shall be the standard burden of proof at Preliminary and Probable Cause Hearings. (Adopted September 2006)~~

[This section was superseded and changed by the updated Rules of the Judicial Discipline & Disability Commission. March 13, 2008].

**G. Commission Counsel**

1. Commission Counsel acts as legal counsel to the Commission, and as a partition between the Commission staff and the Commission in order to ensure the fairness, and the appearance of fairness, of the Commission. At no time shall Commission Counsel assist Commission staff or be privy to any ongoing investigation pursuant to Rule 8 of the Judicial Disability and Discipline Rules, except as provided under Rule 10.

2. Specific Duties of Commission Counsel

(a) Commission Counsel is required to attend all Commission meetings, to attend the annual meeting of the Association of Judicial Discipline Counsel, and the bi-annual National Judicial College;

(b) If the Commission staff prepares a formal statement of allegations against a judge, in accordance with Rule 9 of the Judicial Disability and Discipline Rules, the Commission Counsel as directed by the Commission shall schedule a public hearing, and prepare the Scheduling Order.

(c) Thereafter, the Commission Counsel shall receive all motions, notices and other communication from the Commission staff and counsel for the judge regarding the case, disseminate it to the Commission, communicate with defense counsel, and prepare any Orders to be issued by the Commission, as directed.

(d) Commission Counsel shall attend the trial on the allegations and provide requested advice to the Commission. After both parties have



rested, the Commission Counsel, after reviewing the transcript of the hearing, shall draft preliminary findings of fact and conclusions of law for the Commission to review and consider. Upon review of the draft preliminary findings of fact and conclusions of law, and after any changes thereto, the Commission shall make its determination and recommendation in accordance with Rule 9(H) of the Judicial Disability and Discipline Rules.

(e) Commission Counsel shall disseminate the Commission's rulings or decisions to counsel of record, and to the Arkansas Supreme Court as provided by Rule 9 of the Judicial Disability and Discipline Rules.

### 3. Other Duties

(a) At the Commission's direction, Commission Counsel may perform other duties, such as assist the Commission staff in research of legal issues pertinent to general judicial discipline issues, draft requests for Attorney General Opinions on behalf of the Commission, review proposed discipline and disability rules, etc.